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Letter dated 16 September 2003 from the Chairman of the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism addressed to the President of the Security Council

I write with reference to my letter of 21 April 2003 (S/2003/444).

The Counter-Terrorism Committee has received the attached third report from Peru submitted pursuant to paragraph 6 of resolution 1373 (2001) (see annex).

I would be grateful if you could arrange for the present letter and its annex to be circulated as a document of the Security Council.

(*Signed*) Inocencio F. **Arias**
Chairman
Security Council Committee established pursuant to
resolution 1373 (2001) concerning counter-terrorism

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Annex

Letter dated 12 August 2003 from the Chargé d'affaires a.i. of the Permanent Mission of Peru to the United Nations addressed to the Chairman of the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism

[Original: Spanish]

I have the honour to refer to your communication S/AC.40/2002/MS/OC.222 of 4 April 2003, by which you informed us of the priorities which the Committee under your chairmanship has identified in stage A of its programme of work and put forward new questions and observations concerning the implementation of Security Council resolution 1373 (2001) for the consideration of the Government of Peru.

In response to these inquiries, specifically the first one in the aforementioned communication, I should like to inform you that, by virtue of the decision of the Constitutional Court of 3 January 2003, a copy of which is attached as annex 1, the Government of Peru has taken steps to bring its counter-terrorism legislation into conformity with international human rights standards.

In this decision, the Constitutional Court declared unconstitutional various articles of the following legislation:

- Decree-Law No. 25475, adopted on 5 May 1992, which establishes penalties for the crime of terrorism and procedures for its investigation, pre-trial hearing and trial;
- Decree-Law No. 25659, adopted on 12 August 1992, governing the offence of treason against the nation;
- Decree-Law No. 25708, adopted on 12 September 1992, setting forth rules for proceedings in trials for the offence of treason against the nation;
- Decree-Law No. 25880, adopted on 18 November 1992, governing support for terrorism by teachers; and
- Decree-Law No. 25744, adopted on 21 September 1992, setting forth rules to be applied to police investigation, pre-trial hearing and trial, as well as the enforcement of sentences for crimes of treason against the nation provided for in Decree-Law No. 25659.

The Constitutional Court, in its decision, determined that some of the provisions contained in these norms contravened the Political Constitution of Peru in the following main areas:

- The principle of legality, because of the lack of precision in the categorization of the crime of terrorism and the use of general and broad definitions of it.
- The right to due process, in particular:
- The right to be tried in an ordinary court, since, in terrorism cases, trying civilians in military courts had been permitted, and the defendants had no right whatever to challenge the judges and court officials who participated in the trial.

* Annexes are on file with the Secretariat and are available for consultation.

- The right to be brought before a judge without delay, as delays greater than the 15 days provided for in article 2, number 24, subparagraph f, of the Constitution had been tolerated.

- Freedom of information and expression, as the generic and imprecise definition of the offence of expressing support for terrorism constituted a disproportionate and unreasonable restriction of those freedoms.

- The right to a nationality, as cases of expressing support for terrorism committed outside the national territory had been punished by the loss of nationality as a penalty additional to imprisonment.

- Provisions concerning prison sentences, contained in article 139, paragraph 22, of the Constitution, which stipulates that the purpose of a prison sentence is the re-education, rehabilitation and reintegration of the prisoner into society, whereas the crime of terrorism was punishable by life imprisonment, without provision for early release or other commutation in order to avoid an unlimited sentence.

- The right to liberty and integrity of person, as it was concluded that subjecting a prisoner to solitary confinement for a period of a year constituted an unreasonable and disproportionate punishment amounting to cruel and inhuman treatment.

As a result of the decision of the Constitutional Court, the Congress of the Republic delegated to the Executive Branch the authority provided in the Constitution to legislate in the area of combating terrorism for the purpose of replacing the corresponding legislation. Accordingly, the following legislative decrees, with the standing and force of law, were adopted, and are attached to this report as annex 2:

- Legislative Decree No. 921 of 18 January 2003, which establishes the legal regime for life imprisonment in domestic law and the maximum sentence for the crimes covered by articles 2 and 3, paragraphs (b) and (c), 4, 5, and 9 of Decree-Law No. 25475.

- Legislative Decree No. 922 of 12 February 2003, which, in conformity with Constitutional Court decision No. 010-2002-AI/TC, invalidates the procedures for trying the offence of treason against the nation and also establishes rules for the applicable criminal procedure.

- Legislative Decree No. 923 of 20 February 2003, which strengthens the organization and operation of State defence in terrorism offences.

- Legislative Decree No. 924 of 20 February 2003, which adds a paragraph to article 316 of the Criminal Code on expressing support for terrorism.

- Legislative Decree No. 925 of 20 February 2003, on effective collaboration in combating terrorism.

- Legislative Decree No. 926 of 20 February 2003, on the invalidation of trials for the crime of terrorism conducted before judges and prosecutors whose identities were kept secret and where the right of challenge had been denied.

- Legislative Decree No. 927, on criminal enforcement for crimes of terrorism.

Declaring the aforementioned laws unconstitutional has had no negative impact on the implementation of resolution 1373 (2001), as the purpose was to repeal the legal provisions which violated the Political Constitution of Peru in substance and form, as well as international human rights standards. By rectifying this situation, national legislation to combat terrorism has been improved and brought into line with international human rights standards.

In Peru, the process of adapting domestic laws to the provisions of resolution 1373 (2001) and the 12 international conventions in the area to which Peru is party is continuing to move forward.

As part of that effort, we will soon receive assistance from the United Nations Centre for International Crime Prevention and the Inter-American Committee to Combat Terrorism. Those institutions will conduct a technical assistance programme on international instruments against terrorism in Lima with the participation of officials from the various Government departments involved in one form or another with combating terrorism.

As a result of this programme, Peru hopes to complete the process of adapting its domestic legislation to its international obligations in that area, thereby reaffirming its commitment to combating terrorism.

Therefore, the Government of Peru would welcome the participation of a Committee expert in the workshop to be held as part of the aforementioned technical assistance programme, to make a presentation on the content and scope of the United Nations Security Council resolutions on combating terrorism and the work that the Committee is doing.

The Government of Peru will keep the Committee informed of its progress in this process in the coming months.

I take this opportunity to convey to you the renewed assurances of my highest consideration.

(*Signed*) Marco **Balarezo**
Chargé d'affaires a.i.